

DENTAL LEGAL UPDATE

New Veteran Owned Business Entities: Fee & Tax Breaks

by Jeanine Lehman, Attorney

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New Texas business entities that are 100% owned by honorably discharged veterans of the U.S. Armed Forces are eligible to receive filing fee and tax breaks. This new Texas law applies to business entities formed between January 1, 2016 and January 1, 2020. The benefits of this law apply to business entities used by dentists for their dental practices, including professional limited liability companies, professional corporations, professional associations and limited liability limited partnerships. The fee break is a waiver of filing fees for formation and for other actions such as amendments, mergers, and more. The fee break commences with formation filing fees and continues for up to five years, while the entity remains 100% veteran owned. This fee break will save eligible dentists, who have a professional entity formed for their practices, as well as dentists, who have a professional entity formed to be an independent contractor to work for other dental practices, a minimum of \$300 in filing fees and in some cases, more.

The Texas franchise tax is also waived for eligible business entities, including dental, from the date of formation up to a maximum period of five years, i.e. with discontinuance of the waiver if the entity ceases to be 100% owned by honora-

bly discharged veterans of the U.S. Armed Forces. During the period of waiver of the Texas franchise tax, there is a requirement to file reports of No Tax Due with the State of Texas.

The benefits of this new law extend to dentists and others, who use business entities for purposes other than the practice of dentistry. Examples include using an eligible business entity for ownership of the dental office building or condominium, side businesses, and side investments such as rent houses and other real estate. These regular business entities may include entities such as limited liability companies, for profit corporations and limited partnerships.

There is an application process to receive the benefits of this new law.

Additional good news is that eligible entities already formed on or after January 1, 2016 can apply for filing fee refunds and waiver of the Texas franchise tax from the State of Texas under this new law.

This fee break will save eligible dentists, who are veterans, a minimum of \$300 in filing fees and in some cases, more.

Prior to entering the private practice of law, Jeanine Lehman was a senior securities analyst and attorney for the Texas State Securities Board and reviewed over 1,000 public securities offerings, including corporate documents.

Speaking Requests

For **Jeanine Lehman** and her colleagues to speak to professional and business groups on legal and practice management topics, please contact Jeanine Lehman at **(512) 918-3435** or jeanine@jeanine.com

**Website Favorites**

Law Offices of
Jeanine Lehman P.C.
www.jeanine.com

Capital Area Dental Society
www.capitalareadental.org

Texas State Board of Dental
Examiners
www.tsbde.state.tx.us

Texas Dental Association
www.tda.org

Texas Academy of
General Dentistry
www.tagd.org

American Dental Association
www.ada.org

Federal Trade Commission
www.ftc.gov

Texas Statutes
www.statutes.legis.state.tx.us

Think it Can't Happen to You?**Office Manager Uses Dentist's Identity in \$1.2 Million Fraud Scheme**

On September 22, 2017, the United States Department of Justice issued a press release concerning a dental office manager, who defrauded dental insurance companies over an extended period of time. According to the press release, between 2005 and 2016, the office manager billed 37 private dental insurance companies for services allegedly performed by an identity theft victim for patients in the Connecticut dental practice, when the victim did not in fact perform those services. The identity theft victim was a dentist who had been affiliated with the practice for a short period of time and retired fully from dentistry in 2011. In total, the office manager earned more than \$1.2 million by billing in the name of the retired dentist. Between 2011 and 2015, approximately \$581,729 was paid by private insurance companies to the practice for services allegedly performed by the retired dentist. As a result, the insurance companies issued 1099 forms to the Internal Revenue Service pertaining to the retired dentist. In 2015 and 2016, the office manager renewed the retired dentist's Connecticut dental license and controlled substance registrations, paying for the renewals with her personal credit card. She also applied for, and received, liability insurance in the name of the retired dentist for several years. The office manager was arrested on a federal criminal complaint in 2016. In 2017, she pleaded guilty to one count of wire fraud.

On September 22, 2017, the office manager was sentenced to 12 months and one day of imprisonment, followed by three years of supervised release, for using an identity theft victim's personal identifying information to submit fraudulent bills to private insurance companies offering dental insurance. A restitution order will also be issued by the judge. This case was investigated by the Federal Bureau of Investigation, Internal Revenue Service – Criminal Investigation Division and US Department of Health and Human Services – Office of Inspector General.

For more information, see: www.justice.gov/usao-ct/pr/stamford-dental-office-manager-sentenced-prison-defrauding-insurance-companies

Dentistry in the Antitrust Cross-hairs: New FTC Task Force

On February 23, 2017, in her first major policy initiative, the Acting Chair of the U.S. Federal Trade Commission (FTC) Maureen K. Ohlhausen announced the establishment of the FTC's Economic Liberty Task Force to advance economic liberty issues, with a particular focus on occupational licensing regulations under the antitrust laws. In her remarks, Chair Ohlhausen cited the FTC Supreme Court victory in the North Carolina Dental case.

For background – the North Carolina State Board of Dental Examiners received complaints from dentists that non-dentists were charging lower prices for teeth whitening services than dentists did. The Board then issued at least 47 official cease-and-

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desist letters to non-dentist teeth whitening service providers and product manufacturers, often warning that the unlicensed practice of dentistry is a crime. This and other related Board actions led non-dentists to cease offering teeth whitening services in North Carolina. The FTC filed an administrative complaint, alleging that the Board's concerted action to exclude non-dentists from the market for teeth whitening services in North Carolina constituted an anti-competitive and unfair method of competition under the Federal Trade Commission Act. This case eventually was decided by the U.S. Supreme Court in 2015, in North Carolina State Board of Dental Examiners v. Federal Trade Commission. The decision hinged on whether the actions of the Board had state-action antitrust immunity. The Court held that because a controlling number of the Board's decision makers are active market participants in the practice of dentistry (i.e. licensed practicing dentists), the Board can invoke state-action antitrust immunity only if it was subject to active supervision by the State. The Court found that the Board was not subject to active supervision by the State and affirmed the appellate court opinion in favor of the FTC. The Court thereby affirmed that the Board's actions against non-dentist teeth whitening service providers and manufacturers violated antitrust law. The dissenting opinion in the North Carolina Dental case observed: "As previously noted, state medical and dental boards have been staffed by practitioners since they were first created, and there are obvious advantages to this approach. It is reasonable for States to decide that the individuals best able to regulate technical professions are practitioners with expertise in those very professions. Staffing the State Board of Dental Examiners with certified public accountants would certainly lessen the risk of actions that place the well-being of dentists over those of the public, but this would also compromise the State's interest in sensibly regulating a technical profession in which lay people have little expertise. As a result of today's decision, States may find it necessary to change the composition of medical, dental, and other boards, but it is not clear what sort of

changes are needed to satisfy the test that the Court now adopts."

In April 2016, the Texas Sunset Advisory Commission Staff Report on the Texas State Board of Dental Examiners referenced the North Carolina Dental case. In that report, the Staff recommended decreasing the size of the Board and changing its composition to consist of four dentists, two dental hygienists, and three public members. The change in composition would result in a Board in which dentist members were in the minority. The Staff recommendation was not followed by the Texas Legislature when it continued the Board's existence in the 2017 Sunset Bill. Instead, the Texas Legislature kept dentist members in the majority of the Board. This composition leaves the Board open to antitrust claims under the state-action ruling in the North Carolina Dental case decision.

The FTC is no stranger to Texas. On October 6, 2014, the FTC submitted comments to the Texas Dental Board on proposed amendments to rule 108.70 and proposed new rule 108.74. The FTC expressed concerns about the effect of such rules on Dental Services Organizations (DSOs) stating: "FTC staff are concerned that the proposed rules, if they are adopted and if they discourage dentists from

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Jeanine Lehman is an Austin, Texas health law attorney who practices dental, health, employment, real estate, and business law.

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Dentistry in the Antitrust Crosshairs (*cont.*)

affiliating with DSOs, may deny consumers of dental services the benefits of competition spurred by the efficiencies that DSOs can offer. The central theme of this letter is a relatively narrow one; it focuses on the *nonclinical* functions of a dental practice that are unlikely to affect the quality of professional dental care. The rules would restrict the choices dentists have when deciding upon the most efficient way to organize the nonclinical aspects of their practices, and deny them potentially significant cost savings and the ability to focus their own efforts on provision of dental care, rather than on the business management aspects of running a dental practice. The use of DSOs for these nonclinical purposes may lead to lower prices and increased access to care.” The proposed amendments to rule 108.70 and proposed new rule 108.74 were not adopted by the Texas Dental Board.

The FTC Economic Liberty Task Force has held public roundtables on July 27, 2017 on “Streamlining Licensing across State Lines: Initiatives to Enhance Occupational License Portability” and on November 7, 2017 on “The Effects of Occupational Licensure on Competition, Consumers, and the Workforce: Empirical Research and Results”. Public comments are available on the FTC website.

The FTC Task Force “addresses the proliferation of occu-

pational licensing and related barriers to economic opportunity, and promotes consideration of less restrictive alternatives in situations where licensing may be unnecessary. Nearly 30 percent of American jobs require a license today, up from less than five percent in the 1950s. For some professions, occupational licensing is necessary to protect the public against legitimate health and safety concerns. But in many situations, the expansion of occupational licensing threatens economic liberty. Unnecessary or overbroad restrictions erect significant barriers and impose costs that harm American workers, employers, consumers, and our economy as a whole, with no measurable benefits to consumers or society. Among other activities, the Task Force will hold public events to support its consideration of how occupational licensing reform could reduce barriers to entry, enhance competition, and promote economic opportunity.”

The website of the FTC Economic Liberty Task Force is www.ftc.gov/policy/advocacy/economic-liberty. Selected advocacy by the FTC on occupational licensing, including for dentists, dental hygienists, and dental therapists, is available at www.ftc.gov/policy/advocacy/economic-liberty/selected-advocacy-relating-occupational-licensing

Expect dentistry to continue to be in the antitrust crosshairs.

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About Our Firm ... Call us at (512) 918-3435

Law Offices of Jeanine Lehman P.C. is a Texas law firm headquartered in Austin with a state-wide health law practice, including representation of Texas dentists and physicians. Our health law practice is focused on business law, transactional aspects of individual and group practices, such as practice sales/purchases/buy-ins, contracts and incorporations, office/facility leases, building purchases/condos, and build-to-suits, employment agreements, financing, and consultation concerning the day-to-day legal concerns of running a health care practice. The firm is owned by Texas Attorney **Jeanine Lehman**. Jeanine has been in private practice as the owner of her firm for over 25 years and has over 30 years' experience as a Texas attorney. She has had one book and over 70 articles published. She speaks to professional and business groups concerning legal topics. Jeanine is blessed to have one dentist and three dental hygienists in her family. Contact us at **(512) 918-3435**, jeanine@jeanine.com or PO Box 202211, Austin, TX 78720, and visit our website at www.jeanine.com. Suggestions for future newsletter topics and invitations to speak to professional groups are appreciated!